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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/981,184

10/18/2001

Jean-Louis H. Gueret

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EXAMINER

LE, HUYEN D

ART UNIT

PAPER NUMBER

3751

DATE MAILED: 11/25/2003

12

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/981,184

Applicant(s)

GUERET, JEAN-LOUIS H.

Examiner

Huyen Le

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 September 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-159 is/are pending in the application.
- 4a) Of the above claim(s) See Continuation Sheet is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) See Continuation Sheet is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Continuation of Disposition of Claims: Claims withdrawn from consideration are 11-15,18,20-22,25,26,36,37,39-51,54-59,66-70,74-83,89-92,102,105-108,111,113-115,118,119,131-133 and 139-159.

Continuation of Disposition of Claims: Claims objected to are 1-10,16,17,19,23,24,27-35,38,52,53,60-65,71-73,84-88,100,101,103,104,109,110,112,116,117,120-130 and 134-138.

DETAILED ACTION***Election/Restrictions***

1. Applicant's election with traverse of Species I, Figures 1-3 and 5 in Paper No. 11 is acknowledged. The traversal is on the grounds that various structures of the receptacle (such as, container with dip tube, pump, etc) as shown in Figs. 10, 14, 15, 16, 19, 20, 24 and 25 can be used in combination with elected species I, Figs 1-3 and 5. Therefore, claims 36,37, 39, 51, 60-92, 102, 131 and 133-142 are readable on the elected species I and should be examined. This is not found persuasive because this is a species restriction requirement depicted by particular drawings, in this case Figures 1-3 and 5. The removable units of Figures 1-3 and 5 are shown in combination with specific receptacles. These removable units are different from the removable units shown in Figures 10, 14, 15, 16, 19, 20, 24 and 25. For the removable unit in Figures 1-3 and 5 used in combination with the receptacles of Figures 10, 14, 15, 16, 19, 20, 24 and 25, these removable units would require different structures compliment with various types of receptacle shown.

The requirement is still deemed proper and is therefore made FINAL.

2. Examiner agrees that claims 60-65, 71-73, 84-88 and 134-138 readable on the elected species. Claims 36, 37, 39, 51, 66-70, 74-83, 89-92, 102, 131, 133, 139-142 are still readable on non-elected species and therefore, withdrawn from consideration. Furthermore, claims 11-15, 18, 20-22, 25, 26, 40-50, 54-59, 105-108, 111, 113-115, 118, 119, 132 and 143-159 have withdrawn from consideration in the previous office action as being drawn to non-elected species.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-4, 6-10, 16, 19, 23, 24, 30-32, 34, 35, 38, 53, 60-65, 71-73, 84-88, 93-96, 98-101, 103, 104, 109, 112, 116, 117, 123-125, 127, 130, 134-138 are rejected under 35 U.S.C. 102(b) as being anticipated by Persi (4,752,147).

The Persi reference discloses a device for applying a product comprising a receptacle 12; a care product 22 (col. 2, line 7) contained in the receptacle 12; a removable unit 26 being configured to be removably positioned on the receptacle 12; an application element 48 configured to be housed within the removable unit 26, wherein the application element 48 comprises a surface configured to apply the product, the surface facing the receptacle 12 when the removable unit 26 is positioned on the receptacle 12 during loading of the application element 8 with the product.

Regarding claims 2 and 95, a portion of the applicator element 48 is porous.

Regarding claim 4, the removable unit comprises a first portion 26 and second portion 14 that are removably engageable with one another.

Regarding claim 7, the second portion comprises a sealing member 21.

Regarding claims 8 and 99, the sealing member 21 is chosen from a sealing gasket configured to press in a substantially leakproof manner against the first portion 1.

Regarding claims 9 and 100, the application element 48 is secured to the second portion 14.

Regarding claims 10 and 101, the portion to which the application element 48 is secured is configured as a handle member 16 (Fig. 4).

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Regarding claims 16 and 109, the removable unit 26 comprises an end piece 3 (the bottom portion of threaded wall 30) configured to cooperate with a (threading 24) portion of the receptacle 12.

Regarding claims 19 and 112, the receptacle 12 defines an orifice (top opening of the container) for flowing product into the removable unit 26 when the removable unit 26 is positioned on the receptacle 12, and the wherein the device further comprises a sealing member (threading 24) configured to establish a substantially leakproof connection between the removable unit 26 and the orifice.

Regarding claim 23, removable unit 26 comprises a wall defining orifices 28 configured to flow product therethrough.

Regarding claims 34 and 127, the device comprises a housing (top portion of wall 18), the housing being configured to receive the removable unit 26.

Regarding claims 104 and 116, the first portion 26 defines orifices 28 configured to permit flow of product for loading the application element 48 when the removable unit is position on the receptacle 12.

Regarding claims 61-65, 71-73, 84-88 and 134-138, method for loading an application device is inherently performed during the normal operation of the device.

5. Claims 1-4, 6-10, 16, 17, 19, 23, 24, 30-32, 34, 35, 38, 52, 53, 60-65, 71-73, 84-88, 93-95, 96-101, 103, 104, 109, 110, 112, 116, 117, 123-125, 127, 129, 130 and 134-138 are rejected under 35 U.S.C. 102(b) as being anticipated by Chambers (2,311,367).

The Chambers reference discloses a device (Figures 4-6) for applying a product comprising a receptacle 4; a cosmetic or care product (col. 1, lines 6) contained in the receptacle 4; a removable unit 15 being configured to be removably positioned on the receptacle 4; an application element 16 configured to be housed within the removable unit 15,

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wherein the application element 16 comprises a surface configured to apply the product, the surface facing the receptacle 4 when the removable unit 15 is positioned on the receptacle during loading of the application element 16 with the product.

Regarding claim 4, the removable unit 15 comprises a first portion (portion that 15 points to) and a second portion 20 that are removably engageable with one another.

Regarding claim 7, the second portion 20 comprises a sealing member 23.

Regarding claim 8, the sealing member 22 is a sealing skirt 23 configured to press in a substantially leakproof manner (col. 3, lines 7-8) against the first portion.

Regarding claim 9, the application element 16 is secured to the second portion 20.

Regarding claim 10, the portion to which the application element 16 is secured is configured as a handle member 20.

Regarding claim 16, the removable unit 15 comprises an end piece 17 configured to cooperate with a portion of the receptacle 4.

Regarding claim 17, the end piece 17 is configured to cooperate with a neck portion associated with the receptacle 5.

Regarding claims 19 and 112, the receptacle 4 defines an orifice for flowing product into the removable unit 15 when the removable unit 15 is positioned on the receptacle 4, and wherein the device further comprises a sealing member (neck portion 17) configured to establish a substantially leakproof connection between the removable unit 15 and the orifice of the receptacle 4.

Regarding claim 23, removable unit 15 comprises a wall defining an orifice configured to flow product therethrough.

Regarding claim 34, the device comprises a neck constituting a housing, the housing being configured to receive the part 17 of the removable unit 15.

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Regarding claim 110, the end piece 17 is configured to cooperate with a neck portion associated with receptacle 4.

Regarding claim 116, the first portion comprises a wall defining at least one orifice configured to flow product therethrough.

Regarding claims 123-125, the application element 16 is made of a compressible foam material.

Regarding claim 127, the device comprises a housing 4 associated with the receptacle 5, the housing 4 being configured to receive at least part of the removable unit.

Regarding claim 129, the application element 16 occupies a portion of space when the product is not loaded and is configured to expand within the space upon being loaded with product.

Regarding claims 61-65, 71-73, 84-88 and 134-138, method for loading an application device is inherently performed during the normal operation of the device.

6. Claims 60-65, 71-73, 84-88 and 134-138 are rejected under 35 U.S.C. 102(b) as being anticipated by Dempsey (U.S. 1,534,259).

The Dempsey reference discloses a device for applying a product comprising a receptacle 1; a removable unit 3 being configured to be removably positioned on the receptacle 1; an application element 8 configured to be housed within the removable unit 3, wherein the application element 8 comprises a surface configured to apply the product, the surface facing the receptacle 1 when the removable unit 3 is positioned on the receptacle 1 during loading of the application element 8 with the product.

Regarding claims 61-65, 71-73, 84-88 and 134-138, method for loading an application device is inherently performed during the normal operation of the device

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 27-29 and 120-122 are rejected under 35 U.S.C. 103(a) as being unpatentable over Persi (4,752,147) in view of Gueret (6,309,124).

Although the Persi reference does not disclose that the applicator member 48 is made of a non-compressible material such as a sintered material, attention is directed to the Gueret '124 reference which teaches another applicator having an application member 25 made of a sintered material.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ an application member made from a sintered material for the Persi applicator in view of the teaching of the Gueret '124 reference, since selecting a known material on the basis of its suitability for the intended use is a mere matter of obvious design choice. In re Leshin, 125 USPQ 416.

9. Claims 1-8, 16, 17, 19, 23, 24, 30, 32-35, 38, 52, 53, 93-99, 109, 110, 116, 117, 123-127, 129 and 130 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dempsey (1,534,259) in view of Persi (4,752,147).

The Dempsey reference discloses a device for applying a product comprising a receptacle 1; a removable unit 3 being configured to be removably positioned on the receptacle 1; an application element 8 configured to be housed within the removable unit 3, wherein the application element 8 comprises a surface configured to apply the product, the surface facing

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the receptacle 1 when the removable unit 3 is positioned on the receptacle 1 during loading of the application element 8 with the product.

Although the Dempsey reference does not disclose that the product includes a cosmetic or care product, attention is directed to the Persi reference which discloses another applicator for applying lotion other fluid (col. 2, line 7) contained in the receptacle 12.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ a cosmetic or care product in the Dempsey application device in view of the teaching of the Persi reference, wherein so doing would amount a mere substitution of one functional equivalent product for another within the same art that would work equally well in the Dempsey applicator device.

Regarding claim 4, the removable unit 3 comprises a first portion 3 and a second portion 10 that are removably engageable with one another.

Regarding claim 5, the first portion 3 and the second portion 10 are removably engageable by screw fastening.

Regarding claims 7 and 8, the second portion 10 includes a skirt constituting a sealing member.

Regarding claim 16, the removable unit 3 comprises a skirt constituting "an endpiece" configured to cooperate with a portion of the receptacle.

Regarding claim 17, the end piece is configured to cooperate with a neck portion 2 associated with the receptacle 1.

Regarding claim 19, the receptacle 1 defines an orifice (top opening of the container) for flowing product into the removable unit 3 when the removable unit 3 is positioned on the receptacle 1, and the wherein the device further comprises a sealing member (threading 24)

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configured to establish a substantially leakproof connection between the removable unit 26 and the orifice.

Regarding claim 23, removable unit 1 comprises a wall 2 defining an orifice 5 configured to flow product therethrough.

Regarding claim 32, the application element 8 is made of a material chosen from a felt.

Regarding claims 33 and 126, the applicator member 8 comprises a felt which is a woven fabric.

Regarding claim 34, the device comprises a housing 2 configured to receive at least part of the removable unit 3.

Regarding claim 35, the housing 2 comprises a wall (having thread) for guiding movement of the removable unit while it is placed in position on the receptacle.

Regarding claim 38, the receptacle defines an orifice (top opening) configured to be in flow communication with the product in the receptacle.

Regarding claim 97, the first portion 3 and the second portion 10 are removably engageable with one another via screw-fastening.

10. Claims 27-29 and 120-122 are rejected under 35 U.S.C. 103(a) as being unpatentable over over Dempsey (1,534,259) in view of Persi (4,752,147) and further in view of Gueret (6,309,124).

Although the Dempsey reference does not disclose that the applicator member 8 is made of a non-compressible material such as a sintered material, attention is directed to the Gueret '124 reference which teaches another applicator having an application member 25 made of a sintered material.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ an application member made from a sintered material for the Dempsey

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applicator in view of the teaching of the Gueret '124 reference, since selecting a known material on the basis of its suitability for the intended use is a mere matter of obvious design choice. In re Leshin, 125 USPQ 416.

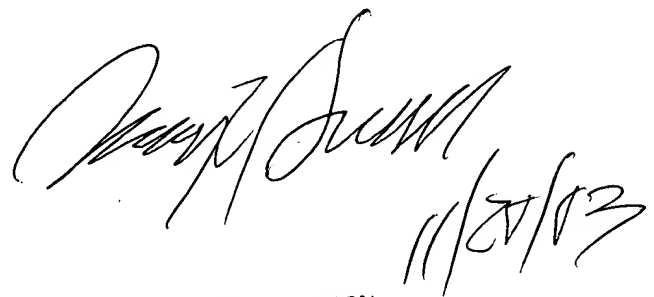
Conclusion

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huyen Le whose telephone number is 703-306-5504. The examiner can normally be reached on Monday-Friday from 9:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on 703-308-2580. The fax phone number for the organization where this application or proceeding is assigned is 703-308-7766.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0861.

HL
November 20, 2003



GREGORY L. HUSON
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